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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

THEODORE ALEXANDER STARR,

Defendant and Appellant.

2d Crim. No. B162247  
(Super. Ct. No. 1009574)  
(Santa Barbara County)

Theodore Alexander Starr pleaded no contest in February 2000 to one count of forgery (Pen. Code, § 470, subd. (a))<sup>1</sup>, and one count of receiving stolen property. (§ 496, subd. (a).) The trial court suspended imposition of sentence and granted Starr three years' felony probation. In July 2002, appellant was arrested for his fourth probation violation. The trial court revoked probation and sentenced appellant to the mid-term of two years in state prison on the forgery and a consecutive term of eight months on the remaining count. Appellant contends the consecutive sentences were an abuse of discretion. We affirm.

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise stated.

### *Facts*

In February 2000, appellant and a girlfriend stole a credit card and check from a woman's wallet, used the credit card to reserve a limousine, and then presented the check, which had been forged, to pay for the limousine. He pleaded no contest to forgery and receiving stolen property. The trial court suspended imposition of sentence and granted three years' felony probation on the conditions that, among other things, appellant serve 120 days in county jail and abstain from drug and alcohol use.

Appellant was arrested and found to have violated his probation on four separate occasions between June 2000 and July 2002. Each probation violation involved the use of alcohol or illegal drugs. On one occasion, a pair of folding blade knives were found in appellant's possession. On another, he ran from the arresting officers and then tried to evade a drug test by repeatedly pouring his urine sample in the toilet. Between September 2001 and July 2002, appellant was dismissed from two different substance abuse treatment programs because of unexcused absences and bad conduct. During that same period, he left Santa Barbara County without the permission of his probation officer and tested positive for cocaine. He was finally arrested after he failed to enroll in a third treatment program and then fled from probation officers who were conducting a field visit at his address.

### *Discussion*

We review the trial court's sentencing choices under the deferential abuse of discretion standard. Unless appellant shows the sentence imposed was arbitrary or irrational, we presume the trial court acted to achieve legitimate sentencing objectives. (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977-78, 981; *People v. Downey* (2000) 82 Cal.App.4th 899, 909-910.) Here, appellant's many juvenile adjudications of delinquency and his poor performance on probation justified the trial court's decision to impose consecutive sentences. (*People v. Downey, supra*, 82 Cal.App.4th at p. 917.) Numerous sustained petitions in juvenile delinquency proceedings are among the circumstances in aggravation that may properly be considered

by the trial court in deciding whether to impose consecutive rather than concurrent sentences. (Cal. Rules of Court, rules 4.421, subd. (b)(2), and 4.425, subd. (b).)

We reject appellant's contention that the trial court abused its discretion by misunderstanding his argument at the sentencing proceeding. Our review of the record indicates the trial court understood and rejected on the merits the argument advanced by appellant's counsel. Counsel did not request that the convictions be classified as misdemeanors under section 17, subdivision (b). Rather, she requested that the trial court terminate probation and sentence appellant to additional time in jail rather than in state prison. The trial court heard the argument and rejected it. In doing so, it expressly stated its understanding that it was not required to sentence appellant to state prison. The resulting sentence was not the product of a misunderstanding but of a reasoned judgment that appellant's criminal conduct merited a prison term. There was no abuse.

For the same reason we reject appellant's contention that the trial court abused its discretion because it relied on appellant's post-conviction conduct rather than the facts of underlying offense in deciding whether to impose a prison sentence. The trial court reviewed the probation report describing appellant's offense and recommending the sentence imposed. Throughout the sentencing proceeding, it referred to appellant's conduct in stealing both the credit card and the check, and to the fact that both the owner of the credit card and the limousine service were victims of these crimes.

The fact that appellant's co-defendant received a different sentence does not demonstrate an abuse of discretion in appellant's sentence. "Evidence of the disposition of a codefendant's case . . . is not relevant . . . " to determining the length of sentence imposed. (*People v. Mincey* (1992) 2 Cal.4th 408, 476.)

We also reject the contention that the trial court made improper dual use of appellant's juvenile adjudications and performance on probation to justify both imposition of the mid-term sentence and consecutive rather than concurrent terms. There was no error. California Rule of Court rule 4.425, subdivision (b) allows the trial to consider, in deciding whether to impose consecutive terms, any circumstance in aggravation or mitigation other than "(i) a fact used to impose the upper term, (ii) a fact

used to otherwise enhance the defendant's prison sentence, and (iii) a fact that is an element of the crime . . . ." Because the trial court imposed the mid-term, rather than the upper term, its consideration of criminal history and probation violations does not violate this rule.

The judgment is affirmed.

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

William L. Gordon, Judge  
Superior Court County of Santa Barbara

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Danalynn Pritz, under appointment by the Court of Appeal, for Defendant and Appellant.

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